IT 00-0061-GIL 08/15/2000 APPORTIONMENT – SALES FACTOR

General Information Letter: Corrects the discussion in IT 00-0049 GIL, concluding that the sales factor cannot be negative.

August 15, 2000

Dear:

Department Letter Ruling IT00-0049-GIL, in response to your request for a General Information Letter (GIL) dated May 31, 2000, contains an erroneous application of 86 Ill. Adm. Code 100.3380(b)(6). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which may be viewed on our website at http://www.revenue.state.il.us/legalinformation/regs/part1200.

Your letter of May 31, 2000 stated as follows:

> In accord with 2 Ill. Admin. Code 1200.120(b) and (c), we respectfully request assistance in applying §100.3380(b)(6), which addresses the inclusion of the net gains from sales of business intangibles in the sales factor of the apportionment formula. We understand that your response will constitute a general information letter, which is not binding on the Department of Revenue, and cannot, therefore, be relied upon as authority.
>
> This particular code section states that sales of business intangibles should only be included in the sales factor of the apportionment formula to the extent of the net gain (loss) from such transactions. Our question concerns how the losses from such transactions enter into this computation in different scenarios.
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> Situation 1: A capital gain of $10,000 from the sale of an intangible asset is attributable to Illinois. Two other sales of intangibles, both attributable to locations outside Illinois, resulted in net losses of $3,000 and $1,000. There are no other receipts for the period. All income for the period is classified as business income.
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> We believe the numerator of the factor is 10,000 and that the denominator is 6,000 (10,000-3,000-1,000). The resultant factor as computed would then be 167%, which would be limited to 100% for apportionment purposes.
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> Situation 2: A capital loss from the sale of an intangible of $5,000 is attributed to Illinois. A capital gain from the sale of an intangible of $3,000 is attributed to a source outside Illinois. Sales attributed to locations other than Illinois of $4,000 also occur during the period. All income is business income.
>
> In this case, the numerator of the sales factor is –5,000, and the denominator is 2,000. (-5,000+3,000+4,000) However, the sales factor is 0%, since a negative factor is prohibited.
>
> Situation 3: A net capital loss from an intangible of $20,000 is attributed to Illinois. Other receipts attributed to Illinois are $8,000. There are no other gains or losses from the sales of intangible assets. Total other receipts, including those attributed to Illinois, are $30,000. All income is business income.

In this case, the numerator of the factor is –12,000, since the net loss is netted against other gross receipts. The denominator of this factor is 10,000. (-20,000+30,000) As in situation 2, the sales factor is 0%, since a factor cannot be less than 0%.

RULING

As indicated in IT00-0049-GIL, Illinois income tax regulations provide certain special rules for purposes of computing the sales factor in the case of sales of business intangibles. In particular, section 100.3380(b)(6) states:

> In the case of sales of business intangibles (including, by means of example, without limitation, patents, copyrights, bonds, stocks and other securities), gross receipts shall be disregarded and only the net gain (loss) therefrom shall be included in the sales factor.

Applying the above provision to your Situations 2 and 3, IT00-0049-GIL indicates that net losses from sales of business intangibles may be fully included in the sales factor. In this regard, IT00-0049-GIL does not correctly reflect the proper application of section 100.3380(b)(6). Under this section, net losses from sales of business intangibles may only be included in the sales factor to the extent of net gains from such sales. (*See* Letter Ruling IT 91-104).

In situation 2, IT00-0049-GIL computed the sales factor as –2.5. This result is incorrect. Proper application of regulations section 100.3380(b)(6) results in a sales factor of 0. The $2,000 of excess capital loss must be excluded from the sales factor. In situation 3, IT00-0049-GIL computed the sales factor as –1.2. Again, this result is erroneous. Proper application of section 100.3380(b)(6) results in a sales factor of .266666. Here, then, despite the explicit indication of section 100.3380(b)(6) that the net loss from sales of business intangibles be included in the sales factor, in situation 3 the capital loss of $20,000 is entirely disregarded.

As stated above, this is a GIL. Accordingly, it does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and wish to obtain a binding private letter ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of 2 Ill. Adm. Code 1200.110(b).

I hope this information is helpful. If you have further questions related to the Illinois income tax laws, visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely,

Brian L. Stocker
Staff Attorney - Income Tax